

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

19-CR-227-JLS

JOSEPH BONGIOVANNI,
PETER GERACE, JR.,

Defendants.

UNITED STATES OF AMERICA,

v.

23-CR-37-JLS-MJR

PETER GERACE, JR.,

Defendant

**GOVERNMENT'S RESPONSE TO DEFENDANT BONGIOVANNI'S MOTION TO
SEVER DEFENDANT FOR TRIAL**

THE UNITED STATES OF AMERICA, by and through its attorney, Trini E. Ross, United States Attorney for the Western District of New York, Joseph M. Tripi, Nicholas T. Cooper, and Casey L. Chalbeck, Assistant United States Attorneys, Corey R. Amundson, Chief, United States Department of Justice, Public Integrity Section, and Jordan Dickson, Trial Attorney, United States Department of Justice, Public Integrity Section, of counsel, hereby files its response to defendant Joseph Bongiovanni's motion for severance. ECF No. 697.

Mr. Bongiovanni has moved for severance. *See* Not. of Mot. to Sever Def. for Tr., ECF No. 697, (dated Dec. 19, 2023). Before the instant motion, Mr. Bongiovanni twice filed motions for severance. *See* Mot. to Sever Def., ECF No. 343, (dated Jan. 04, 2023); Mot. to

Sever Def., ECF No. 586, (dated Aug. 10, 2023). The Court denied both prior motions. *See* Dec. & Order, ECF No. 442, (dated April 28, 2023); Minute Entry, ECF No. 612, (dated Aug. 18, 2023). The government maintains that those decisions were legally sound and appropriate for the reasons argued in the government's prior responses and adopted by the Court. However, the Court's recent adjournment of the January 8, 2024, trial date presents a new basis for severance.

To the extent defendant Bongiovanni advances any Speedy Trial claims in his severance motion, the government respectfully submits that no speedy trial time has been chargeable to the government since the inception of the case; that the government began in or about the Fall of 2022 requesting a trial date; that defendant Bongiovanni's case would have been tried in June 2023, but-for issues related to Bongiovanni's then-counsel which delayed Bongiovanni's trial; and that subsequent delays of scheduled trial dates have been attributable to the defendants.

Nevertheless, on the condition that the trial commence either the first or second week of February 2024, and with the Court and defendant Bongiovanni's prior agreement on the record to commence trial on February 12, 2024,¹ the government consents to severing Mr. Bongiovanni's case from Mr. Gerace's. Should the Court grant Mr. Bongiovanni's motion, the government fully reserves the right to move to rejoin the cases in the event of an unforeseen adjournment of Mr. Bongiovanni's trial.

Further, the Protective Order (*see* ECF No. 347) prohibits the defense from providing

¹ *See* Transcript of Proceedings, December 19, 2023, at 11: 7-19.

copies of 3500 materials to Bongiovanni, and no copies of any 3500 materials are permitted to be retained by anyone other than the attorneys of record in this case. However, the government consents and agrees that **counsel for Bongiovanni only** may begin reviewing and discussing 3500 materials previously produced **with defendant Bongiovanni** 42 days prior to the February 12, 2024, anticipated trial date as long as all copies of all 3500 materials are retained by counsel for defendant Bongiovanni.

Finally, nothing in this filing should be construed as consenting to any relief that has been or may be requested by defendant Gerace, and the government intends to oppose any and all severance requests by defendant Gerace.

DATED: Buffalo, New York, December 22, 2023.

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